

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

MARTYN STEWART, d/b/a ,  
NATURESOUND.ORG

Plaintiff,

v.

APPLE, INC., MITCH WAITE GROUP LLC  
and MITCHELL WAITE

Defendants.

Cause No.

COMPLAINT FOR  
COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Martyn Stewart, d/b/a Naturesound.org (“Mr. Stewart”) complains of  
Defendants as follows:

**PARTIES**

1. Mr. Stewart is an individual residing in this district in Redmond, Washington.
2. Upon information and belief, Defendant Apple, Inc. (“Apple”) is a California Corporation with a principle place of business in Cupertino California.
3. Upon information and belief, Mitch Waite Group LLC (“MWG”) is a California Limited Liability Company with a principle place of business in Sausalito California.
4. Upon information and belief, Defendant Mitchell Waite (“Mr. Waite”) is an individual residing in Sausalito California.

1           5.       Upon information and belief, Apple is engaged in the business of providing  
2 various consumer electronic and software products, including but not limited to, the Apple  
3 “iPhone” product and various applications for use therewith to consumers throughout the  
4 United States, the State of Washington and in this district.

5           6.       Upon information and belief, Defendants MWG and Mr. Waite are engaged in  
6 the business of developing and providing various software applications useful in connection  
7 with the Apple iPhone, which applications are offered and sold through Apple's “Apple  
8 Store” to consumers throughout the United States, the State of Washington and in this district.

#### 9 JURISDICTION AND VENUE

10          7.       This is an action arising out of the copyright laws of the United States, 17  
11 U.S.C. §501 et seq.

12          8.       This Court has subject matter jurisdiction pursuant to 17 U.S.C. § 501(a) and  
13 28 U.S.C. § 1331.

14          9.       Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400  
15 because the Defendants conduct business within this judicial district, and they or their agents  
16 or affiliates can be found in this judicial district. Acts giving rise to this complaint occurred  
17 within this judicial district.

#### 18 FACTS

19          10.       Mr. Stewart is an audio/naturalist engaged in the business and activity of  
20 recording naturally occurring sounds. Many of Mr. Stewart's sound recordings have been  
21 included in over 150 feature films, television programs and radio broadcasts. Mr. Stewart's  
22 business activities are of a freelance sound recordist also working through his website.

23          11.       Over the years, and as part of his activities, Mr. Stewart has recorded and  
24 collected the sound of over 3500 birds in their natural settings. These recordings were made  
25 and collected over a period of 35 years after locating, identifying and recording the birds in  
26 their natural outdoor habitats and settings. Mr. Stewart's bird sound recordings represent a  
27

1 substantial investment of time, energy, skill and effort and are of important commercial value  
2 to Mr. Stewart and his business.

3 12. Mr. Stewart is the owner of all copyrights in the various bird sound recordings  
4 that are the subject of this action and that are alleged, herein, to be infringed by Defendants  
5 Apple, MWG and Mr. Waite. These copyrights are the subject of a federal copyright  
6 registration application filed by Mr. Stewart on December 12, 2009 for his various bird sound  
7 recordings and assigned Service Request No. 1-294640521. A copy of Plaintiff's copyright  
8 registration application for the bird sound recordings is attached hereto as Exhibit A.

9 13. In or about February, 2007, Defendant Mr. Waite, on behalf of Defendant  
10 MWG, contacted Mr. Stewart concerning the possibility of obtaining a license to use Mr.  
11 Stewart's copyrighted bird sound recordings as part of a program for the Palm Pilot called  
12 "Winged Explorer". Despite these initial communications, Mr. Stewart and Mr. Waite never  
13 concluded a formal license arrangement.

14 14. Without Mr. Stewart's knowledge or consent, Mr. Waite and MWG  
15 incorporated Mr. Stewart's copyrighted bird sound recordings into a series of software  
16 applications marketed under the general trade name "iBird" for the iPhone product. On  
17 information and belief, there are approximately nine individual applications distributed in the  
18 iBird series (collectively and individually referred to as the "iBird applications")

19 15. The iBird series of applications are and have been nationally distributed by  
20 Defendant Apple for use with iPhones and other devices.

21 16. The "iBird" applications contain and reproduce Mr. Stewart's copyrighted bird  
22 sound recordings without the consent or permission of Mr. Stewart, are nationally marketed to  
23 consumers throughout the World, including the United States and this District, and have been  
24 used by Defendant Apple to promote it's iPhone product in national advertising.

25 17. The iBird applications explicitly identify Mr. Stewart as the recordist and  
26 author of the bird sound recordings. Attached as Exhibit B is a screen capture taken from one  
27 of the iBird applications illustrating the admission by Defendants that the bird sound

1 recordings used in the iBird applications are in fact Mr. Stewart's bird sound recordings. This  
 2 admission further evidences Defendants' *a priori* knowledge of Mr. Stewart's ownership and  
 3 copyrights in the bird sound recordings.

4 18. Representative samples of advertising for the "iBird" products that are created  
 5 and distributed by Defendants and their agents that incorporate Mr. Stewart's copyrighted bird  
 6 sound recordings are attached as Exhibit C,

## 8 CAUSE OF ACTION

### 9 COPYRIGHT INFRINGEMENT

10 19. Mr. Stewart incorporates the allegations made in paragraphs 1-18 as if fully set  
 11 forth herein.

12 20. Defendants have willfully committed copyright infringement under 17 U.S.C.  
 13 § 501 et. seq., directly, by inducement, or by way of contributory liability, by knowingly  
 14 aiding, causing, or committing, the unauthorized practice or execution of one or more  
 15 exclusive rights owned by Mr. Stewart set forth in 17 U.S.C. § 106, said exclusive rights  
 16 having been perfected by U.S. Copyright Service Request No. 1-294640521 for Mr. Stewart's  
 17 sound recordings.

## 18 PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff, Mr. Stewart, prays for the following relief:

20 A. An order entering judgment in favor of Mr. Stewart and awarding damages to  
 21 Mr. Stewart in the amount of Mr. Stewart's actual damages and any profits of the Defendants  
 22 attributable to the infringing acts alleged herein, consistent with 17 U.S.C. § 504(a)(1), or, at  
 23 his election, an award of statutory damages consistent with 17 U.S.C. § 504(a)(2).

24 B. An order entering judgment in favor of Mr. Stewart and enjoining any further  
 25 acts of infringement of the copyrights in the bird sound recordings, the "iBird" applications,  
 26 and further ordering the destruction of all articles used (such as master disks or data models)  
 27

1 in the acts of infringement, consistent with remedies available under 17 U.S.C. § 503 and 15  
2 U.S.C. § 1118.

3 C. An award of full costs and reasonable attorney's fees against Defendants and in  
4 favor of Mr. Stewart pursuant to 17 U.S.C. § 505.

5 D. Such other further relief the Court may deem just and proper.

6  
7 **JURY DEMAND**

8 Mr. Stewart demands a trial by jury on all issues presented in this Complaint.

9  
10 Dated this 18th day of June, 2010.

11 Respectfully submitted,

12 /s/ Philip P. Mann  
13 Philip P. Mann, WSBA No: 28860  
14 **MANN LAW GROUP**  
15 1218 Third Avenue, Suite 1809  
16 Seattle, Washington 98101  
17 (206) 436-0900  
18 Fax (866) 341-5140  
19 [phil@mannlawgroup.com](mailto:phil@mannlawgroup.com)

20 /s/ John Whitaker  
21 John Whitaker, WSBA No: 28868  
22 **WHITAKER LAW GROUP**  
23 1420 Fifth Avenue, Suite 2200  
24 Seattle, Washington 98101  
25 Phone (206) 319-1575  
26 Fax (206) 347-1057  
27 [john@wlawgrp.com](mailto:john@wlawgrp.com)

Attorneys for Plaintiff Martyn Stewart